

Message Text

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PAGE 01 USUN N 02233 131707Z

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FROM: LOS DEL

E.O. 11652: N/A

TAGS: PLOS

SUBJ: INFORMAL PLENARY OF 8 JULY 1977 ON PART IV (COMPULSORY
DISPUTE SETTLEMENT)

1. SUMMARY: THE CHAIRMAN (PRESIDENT AMERASINGHE) OPENED A
DISCUSSION OF ALL ARTICLES IN PART IV AND ITS FOUR ANNEXES
NOT HERETOFORE DISCUSSED. A NUMBER OF DELEGATIONS SPOKE,
MAKING NUMEROUS PROPOSALS AND AMENDMENTS TO PART IV. CHIEF
AMONG THESE WERE PROPOSALS BY SWITZERLAND, AUSTRALIA, THE
UNITED STATES AND THE SOVIET UNION. DUE TO THE NUMBER OF
PROPOSALS AND THEIR COMPLEXITY, THE PROPOSALS WILL BE POUCHED
UPON THEIR RECEIPT FROM THE SECRETARIAT. THE MAJOR POINTS
RAISED BY THE UNITED STATES APPEAR IN PARA. 3 INFRA.
END SUMMARY.

2. SPEAKERS INCLUDED TUNISIA, CHILE, SWITZERLAND, AUSTRALIA,
ARGENTINA, THE UNITED STATES, THE USSR, TRINIDAD AND TOBAGO,
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PAGE 02 USUN N 02233 131707Z

AND PERU.

3. THE UNITED STATES'S REPRESENTATIVE RAISED A NUMBER OF
SPECIFIC POINTS, PRIMARILY ON ANNEXES II K (STATUTE OF THE
TRIBUNAL) AND III (ARBITRATION). THE US REPRESENTATIVE
SUGGESTED THAT THE NUMBER OF TRIBUNAL MEMBERS IN ARTICLE
15 OF ANNEX II TO PART IV BE REDUCED FROM 21 TO 17 OR 19,

IN ORDER TO ALLOW TWO CHAMBERS OF NINE EACH WITH AN INDEPENDENT PRESIDENT. HE ALSO FOUND MERIT IN THE AUSTRALIAN PROPOSAL OF 21 MEMBERS, WITH TWO CHAMBERS OF 11, THE PRESIDENT PARTICIPATING IN BOTH. AN EQUAL NUMBER OF JUDGES IN BOTH THE CHAMBER AND THE TRIBUNAL WOULD PREVENT DOMINATION OF ONE OVER THE OTHER. IN ORDER THAT THE TRIBUNAL ENJOY THE FULL CONFIDENCE OF THE CONTRACTING PARTIES, HE SUGGESTED THAT THE PERCENTAGE OF THE CONTRACTING PARTIES PRESENT AND VOTING UNDER ARTICLE 4 OF ANNEX II BE INCREASED FROM TWO-THIRDS TO FOUR-FIFTHS. IN ORDER TO ENSURE THE INDEPENDENCE OF TRIBUNAL MEMBERS HE SUPPORTED THE ELECTION OF CHAMBER MEMBERS FROM AND BY THE MEMBERS OF THE FULL TRIBUNAL, BUT THE US WOULD BE WILLING TO ACCEPT ELECTION BY THE ASSEMBLY ON THE RECOMMENDATION BY THE COUNCIL. CITING THE US SUPREME COURT AS AN EXAMPLE, HE STATED THAT ITS INDEPENDENT NATURE WOULD BE UNDERSCORED WERE THE JUSTICES ELECTED FOR LIFE. HE PROPOSED THAT THE FOLLOWING CHAPEAU BE ADDED TO ARTICLE 15 ANNEX II: "A SEABEDS DISPUTE CHAMBER SHALL BE ESTABLISHED, ITS JURISDICTION, POWERS AND FUNCTIONS, AND THE ACCESS TO IT, TO BE GOVERNED BY THE PROVISIONS OF PART IV OF THE PRESENT CONVENTION". AS TO ARTICLE 16 OF ANNEX II, IT WOULD BE PREFERABLE WERE THE ESTABLISHMENT OF THE SPECIAL CHAMBERS TO BE LEFT TO THE DISCRETION OF THE TRIBUNAL, AS WAS THE PRACTICE OF THE INTERNATIONAL COURT OF JUSTICE. THE CHAMBER FOR SUMMARY PROCEDURE, HOWEVER, WOULD HAVE TO REMAIN AS PROVIDED FOR UNDER LIMITED OFFICIAL USE

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PAGE 03 USUN N 02233 131707Z

ARTICLE 16.

4. IN ORDER TO MAKE CLEAR THAT THE ARBITRATION PROCEDURE PROVIDED FOR IN THIS ANNEX MIGHT APPLY ALSO TO DISPUTES INVOLVING PARTIES OTHER THAN STATES, A NEW ARTICLE 13 SHOULD BE ADDED TO ANNEX III, WHICH MIGHT READ AS FOLLOWS:

"ARTICLE 13"

"THE PROVISION OF THIS ANNEX SHALL APPLY MUTATIS MUTANDIS TO ANY DISPUTE INVOLVING ENTITIES OTHER THAN CONTRACTING PARTIES."

5. THE CHAIRMAN ANNOUNCED THAT THE INFORMAL PLENARY HAD COMPLETED ITS SCHEDULED DISCUSSION OF PART IV FOR THE PRESENT SESSION.
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